

100 participants. Use of the model language is not mandatory. In order to use the model language in the plan's summary annual report, administrators must, in addition to any other information required to be in the summary annual report, select among alternative language and add relevant information where appropriate in the model language. Items of information that are not applicable to a particular plan may be deleted. Use of the model language, appropriately modified and supplemented, will be deemed to satisfy the notice content requirements of paragraph (b)(1)(i)(B) of this section.

APPENDIX TO § 2520.104-46—MODEL SUMMARY ANNUAL REPORT NOTICE (PLAN ADMINISTRATORS WILL NEED TO MODIFY THE MODEL TO OMIT INFORMATION THAT IS NOT APPLICABLE TO THE PLAN)

The U.S. Department of Labor's regulations require that an independent qualified public accountant audit the plan's financial statements unless certain conditions are met for the audit requirement to be waived. This plan met the audit waiver conditions for the plan year beginning (insert year) and therefore has not had an audit performed. Instead, the following information is provided to assist you in verifying that the assets reported on the (Form 5500 or Form 5500-SF—select as applicable) were actually held by the plan.

At the end of the (insert year) plan year, the plan had (include separate entries for each regulated financial institution holding or issuing qualifying plan assets):

[Set forth amounts and names of institutions as applicable where indicated], [(insert \$ amount) in assets held by (insert name of bank)], [(insert \$ amount) in securities held by (insert name of registered broker-dealer)], [(insert \$ amount) in shares issued by (insert name of registered investment company)], [(insert \$ amount) in investment or annuity contract issued by (insert name of insurance company)].

The plan receives year-end statements from these regulated financial institutions that confirm the above information. [Insert as applicable—The remainder of the plan's assets were (1) qualifying employer securities, (2) loans to participants, (3) held in individual participant accounts with investments directed by participants and beneficiaries and with account statements from regulated financial institutions furnished to the participant or beneficiary at least annually, or (4) other assets covered by a fidelity bond at least equal to the value of the assets and issued by an approved surety company.]

Plan participants and beneficiaries have a right, on request and free of charge, to get

copies of the financial institution year-end statements and evidence of the fidelity bond. If you want to examine or get copies of the financial institution year-end statements or evidence of the fidelity bond, please contact [insert mailing address and any other available way to request copies such as e-mail and phone number].

If you are unable to obtain or examine copies of the regulated financial institution statements or evidence of the fidelity bond, you may contact the regional office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) for assistance by calling toll-free 1.866.444.EBSA (3272). A listing of EBSA regional offices can be found at <http://www.dol.gov/ebsa>.

General information regarding the audit waiver conditions applicable to the plan can be found on the U.S. Department of Labor Web site at <http://www.dol.gov/ebsa> under the heading "Frequently Asked Questions."

[43 FR 10151, Mar. 10, 1978, as amended at 43 FR 14010, Apr. 4, 1978; 45 FR 51447, Aug. 1, 1980; 54 FR 8629, Mar. 1, 1989; 65 FR 21085, Apr. 19, 2000; 65 FR 62973, Oct. 19, 2000; 72 FR 64728, Nov. 16, 2007]

§ 2520.104-47 Limited exemption and alternative method of compliance for filing of insurance company financial reports.

An administrator of an employee benefit plan to which section 103(e)(2) of the Act applies shall be deemed in compliance with the requirement to include with its annual report a copy of the financial report of the insurance company, insurance service or similar organization, provided that the administrator files a copy of such report within 45 days of receipt of a written request for such report by the Secretary of Labor.

[45 FR 14034, Mar. 4, 1980]

§ 2520.104-48 Alternative method of compliance for model simplified employee pensions—IRS Form 5305-SEP.

Under the authority of section 110 of the Act the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in part 1 of title I of the Employee Retirement Income Security Act of 1974 in the case of a simplified employee pension (SEP) described in section 408(k) of the Internal Revenue Code of

1954 as amended (the Code) that is created by use without modification of Internal Revenue Service (IRS) Form 5305-SEP.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter), the administrator of the SEP (generally the employer establishing and maintaining the SEP) shall furnish the employee with a copy of the completed and unmodified IRS Form 5305-SEP used to create the SEP, including (1) the completed Contribution Agreement, (2) the General Information and Guidelines, and (3) the Questions and Answers.

(b) Following the end of each calendar year the administrator of the SEP shall notify each participant in the SEP in writing of any employer contributions made under the Contribution Agreement to the participant's individual retirement account or individual retirement annuity (IRA) for that year.

(c) If the employer establishing and maintaining the SEP selects, recommends, or in any other way influences employees to choose a particular IRA or type of IRA into which contributions under the SEP will be made, and if that IRA is subject to restrictions on a participant's ability to withdraw funds (other than restrictions imposed by the Code that apply to all IRAs), the administrator of the SEP shall give to each employee, in writing, within 90 days of the adoption of this regulation or at the time such employee becomes eligible to participate in the SEP, whichever is later, a clear explanation of those restrictions and a statement to the effect that other IRAs, into which rollovers or employee contributions may be made, may not be subject to such restrictions.

[45 FR 24869, Apr. 11, 1980]

§ 2520.104-49 Alternative method of compliance for certain simplified employee pensions.

Under the authority of section 110 of the Act, the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in part 1 of title I of the Act for a simplified employee pension (SEP) de-

scribed in section 408(k) of the Internal Revenue Code of 1954 as amended, except for:

A SEP that is created by proper use of Internal Revenue Service Form 5305-SEP, or; a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or influences its employees to choose the IRAs into which employer contributions will be made and those IRAs are subject to provisions that prohibit withdrawal of funds by participants for any period of time.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter) or up to 90 days after the effective date of this regulation, whichever is later, the administrator of the SEP (generally the employer establishing or maintaining the SEP) shall furnish the employee in writing with:

(1) Specific information concerning the SEP, including:

(i) The requirements for employee participation in the SEP,

(ii) The formula to be used to allocate employer contributions made under the SEP to each participant's individual retirement account or annuity (IRA),

(iii) The name or title of the individual who is designated by the employer to provide additional information to participants concerning the SEP, and

(iv) If the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions under the SEP will be made, a clear explanation of the terms of those IRAs, such as the rate(s) of return and any restrictions on a participant's ability to roll over or withdraw funds from the IRAs, including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties.

(2) General information concerning SEPs and IRAs, including a clear explanation of:

(i) What a SEP is and how it operates,

(ii) The statutory provisions prohibiting discrimination in favor of highly compensated employees,